

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TTAB

Extension of
time

POWER OF ATTORNEY

Opposition No.

Opposer,

vs.

Serial No. 76-167,267

TWENTIETH CENTURY FOX FILM
CORPORATION

Applicant.



12-21-2001

U.S. Patent & TMO/TM Mail Rpt Dt. #67

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Power of Attorney, a partnership organized and existing under the laws of the state of Connecticut, having its principal place of business at 41 Brownleigh Road, West Hartford, Connecticut, 06117¹, composed of Carl J. Schuman, Arnold Feigin, Eric Onore, Steven Sellers, and Thomas Fiorentino as general partners², believes that it will be damaged by registration of the mark POWER OF ATTORNEY for "entertainment services in the nature of a television series featuring drama" in International Class 41, shown in Application Serial No. 76-167,267 filed by Twentieth Century Fox Film Corporation, Los Angeles, California ("Applicant").

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¹ The original Request for Extension of Time incorrectly listed the place of business as 42 Bradburn Road, West Hartford, Connecticut 06117. This information was corrected in the second Request for Extension of Time.

² The original Request for Extension of Time incorrectly indicated that the partners other than Mr. Schuman are limited partners. Counsel corrected this error in the second Request for Extension of Time, but misidentified some general partners. William Kowalski and Holly Sellers are no longer general partners. Thomas Fiorentino, who was not identified in earlier filings, is currently a partner. To the extent that Mr. Fiorentino is considered a new party in this proceeding, he is in full privity with the Power Of Attorney partnership and shares with the partners identified in this Opposition a mutual claim to all rights under the partnership. The general partners identified in this Opposition are successors-in-interest to Mr. Kowalski and Ms. Seller. See TBMP §303.05(b) (Opposition filed during an extension of time to oppose, by a party other than the party to which the extension was granted, will not be rejected on that ground if the differing party is shown to be in privity with the party to whom extension was granted).

Pursuant to 15 U.S.C. §§ 1052(d) and 1063, by and through its attorneys, Opposer hereby opposes the same.

As grounds therefor, it is alleged that:

1. Opposer adopted and has used the POWER OF ATTORNEY word mark in interstate commerce in the United States since at least as early as 1987. Opposer's adoption and use of the POWER OF ATTORNEY mark long precedes Applicant's filing on November 17, 2000 of an application to register its mark, as well as Applicant's alleged first use and first use in United States commerce date of August 28, 2000.

2. Opposer owns U.S. Trademark Registration No. 1,527,419 for the POWER OF ATTORNEY mark, which was registered on the Principal Register on February 28, 1989, for "entertainment services rendered by a vocal and instrumental group" in International Class 41.

3. Opposer's registration for the POWER OF ATTORNEY mark became incontestable on December 29, 1994 with Opposer's filing of its combined Affidavit of Continued Use and Incontestability, pursuant to Sections 8 and 15 of the Lanham Act.

4. Opposer's compliance with Sections 8 and 15 of the Lanham Act provide conclusive evidence of Opposer's right to use its POWER OF ATTORNEY mark on or in connection with the services specified in its registration.

5. Opposer's registered POWER OF ATTORNEY mark is valid and subsisting, in full force and effect, and Opposer's use of the mark has been continuous.

6. Opposer's registered POWER OF ATTORNEY mark is *prima facie* evidence of Opposer's exclusive right to use the mark in commerce on the goods specified in the registration.

7. Opposer's registered POWER OF ATTORNEY mark embodies the goodwill and consumer recognition built up through years of investment in promotional appearances,

advertising, and publicity. Opposer has so used its trademark in connection with its entertainment services that consumers have come to associate the POWER OF ATTORNEY mark with Opposer, and as indicating that entertainment services so identified originate exclusively with Opposer.

8. The date of first use and first use in commerce for Opposer's POWER OF ATTORNEY mark is prior to the November, 17, 2000 filing date of Applicant's application to register its mark, and is also prior to Applicant's alleged first use and first use in commerce date of August 28, 2000. Opposer's legal rights are paramount and superior to those of Applicant.

9. Applicant's POWER OF ATTORNEY mark is visually and phonetically indistinguishable from Opposer's POWER OF ATTORNEY mark. In addition, the mark conveys similar connotative meaning as applied to both Opposer's and Applicant's services. On information and belief, such confusing similarity between Opposer's and Applicant's marks is likely to cause confusion, deception, and/or mistake in the minds of consumers under Section 2(d) of the Lanham Act.

10. Applicant seeks to register its mark in International Class 41 for "entertainment services in the nature of a television series featuring drama." On information and belief, the consumers who are likely to purchase and be familiar with Opposer's entertainment services overlap with the consumers who are likely to purchase and be familiar with Applicant's entertainment services.

11. On information and belief, consumers who are familiar with Opposer's entertainment services and POWER OF ATTORNEY mark might reasonably believe that Opposer is offering its services through the television medium. On information and belief, Applicant's use of the POWER OF ATTORNEY mark on or in connection with entertainment

services delivered through the television medium is likely to cause confusion, deception, and/or mistake in the minds of consumers that Opposer is the origin, source or sponsor of Applicant's services.

12. On information and belief, consumers who are familiar with Opposer's entertainment services and POWER OF ATTORNEY mark might reasonably believe that Opposer has expanded its entertainment services by creating and offering under its mark a television series. On information and belief, Applicant's use of the POWER OF ATTORNEY mark on or in connection with a television series is likely to cause confusion, deception, and/or mistake in the minds of consumers that Opposer is the origin, source or sponsor of Applicant's entertainment services.

13. On information and belief, consumers who view or become familiar with Applicant's entertainment services are likely to be confused, deceived, and/or mistaken in the belief that Applicant's and Opposer's entertainment services share a common origin, source, or sponsor. Any defect, objection or fault found with Applicant's services would necessarily reflect on, and injure, the reputation of Opposer's entertainment services.

14. On information and belief, consumers who view or become familiar with Applicant's entertainment services and who later become familiar with Opposer's entertainment services are likely to be confused, deceived, and/or mistaken in the belief that Opposer adopted its mark subsequent to the Applicant or in an attempt to establish a connection between Opposers and Applicant, all to the detriment of Opposer's goodwill in its mark and services.

15. On information and belief, there is overlap between the expected channels of promotion for Opposer's and Applicant's entertainment services. Consumers who view Applicant's POWER OF ATTORNEY mark on advertising and promotional goods are likely to

be confused, deceived, and/or mistaken in the belief that Opposer is the origin, source or sponsor of Applicant's promotion and advertising, or alternatively, that Applicant is the origin, source, or sponsor of Opposer's entertainment services.

16. In view of the confusing similarity between Opposer's and Applicant's marks, the relatedness of the services sold under the marks, and the overlap between the relevant channels of trade and promotion, consumers could reasonably believe that Opposer's and Applicant's entertainment services share a common origin, source or sponsor. Opposer alleges that Applicant's mark so resembles Opposer's registered mark as to be likely to cause confusion, mistake or deception under Section 2(d) of the Lanham Act, such that the public is likely to believe Applicant's goods originate with or are otherwise licensed, sponsored, authorized by, affiliated with or connected with Opposer.

17. On information and belief, registration of Applicant's POWER OF ATTORNEY mark will constitute prima facie evidence of Applicant's exclusive right to use the mark in commerce on entertainment services in the nature of a television series featuring drama, and will therefore damage Opposer by prejudicing its ability to use its POWER OF ATTORNEY mark on similar entertainment services.

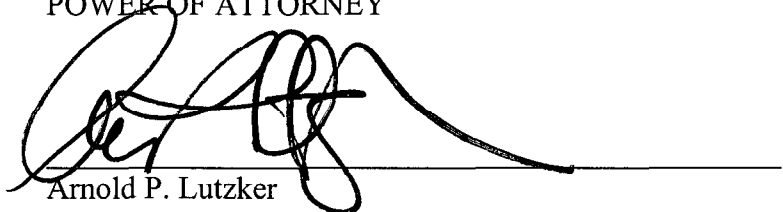
18. For all the foregoing reasons, registration of Applicant's mark will result in damage to Opposer and, accordingly, registration should be refused.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and Application Serial No. 76-167,267 be refused registration.

Respectfully submitted,

POWER OF ATTORNEY

December 21, 2001

A handwritten signature in black ink, appearing to be 'Arnold P. Lutzker', is written over a horizontal line.

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